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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,631	04/17/2001	David A. Hughes	50P4092	7211
24337	7590	10/20/2004	EXAMINER	
MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606			SHERR, CRISTINA O	
		ART UNIT		PAPER NUMBER
		3621		

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/836,631 Examiner Cristina Owen Sherr	Applicant(s) HUGHES ET AL. Art Unit 3621
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 July 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-28 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

<p>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3)<input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____</p>	<p>4)<input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____</p> <p>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6)<input type="checkbox"/> Other: _____</p>
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DETAILED ACTION

1. This communications is in response to the Applicant's Amendment filed July 26, 2004. Claims 1-28 are pending in this case.

Response to Arguments

2. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

Information Disclosure Statement

3. The information disclosure statements (IDS) submitted on April 28, 2004, May 25, 2004, and July 26, 2004 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneck et al (US 6,314,409A) in view of Dolphin (US 5,457,746A).

6. Regarding claim 1 –

Schneck discloses a method of facilitating a transaction for downloadable digital data over an electronic network, the method comprising: maintaining a presence on the

electronic network to which a consumer may connect; transmitting a page from the presence to the consumer over the electronic network, the page including information concerning the downloadable digital data; receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the downloadable digital data; and transmitting format options from the presence to the consumer over the electronic network via the page (e.g. col 6 ln 60 – col 7 ln 20).

7. Schneck does not disclose, but Dolphin does, the format options being selectable by the consumer and including at least one of (i) types of software on which the downloadable digital data may be executed; (ii) types of portable devices on which the downloadable digital data may be stored; (iii) types of compression formats in which the downloadable digital data may be configured; (iv) types of CODECs through which the downloadable digital data may be processed; and (v) types of digital rights management algorithms to which the downloadable digital data may be subject (e.g. col 2 ln 25 – col 3 ln 30).

8. Regarding claim 2 –

Schneck discloses the method of claim 1, wherein at least one of (i) a given type of software is compatible with respective subsets of at least one of the types of compression formats, the types of digital rights management algorithms, and the types of portable devices; (ii) a given type of compression format is compatible with respective subsets of at least one of the types of software, the types of digital rights management algorithms, and the types of portable devices; (iii) a given type of digital rights management algorithm is compatible with respective subsets of at least one of the types of software, the types of compression formats, and the types of portable devices; and

(iv) a given type of portable device is compatible with respective subsets of at least one of the types of software, the types of compression formats, and the types of digital rights management algorithms (e.g. col 7 In 50 – col 8 In 50).

9. Regarding claim 3 –

Schneck discloses the method of claim 2, further comprising permitting selection by the consumer from among only the compatible respective subsets of at least one of the types of compression formats, the types of digital rights management algorithms, and the types of portable devices, when the given type of software is selected by the consumer (e.g. col 8 In 1-30).

10. Regarding claim 4 –

Dolphin discloses the method comprising permitting selection by the consumer from among only the compatible respective subsets of at least one of the types of software, the types of digital rights management algorithms, and the types of portable devices, when the given type of compression format is selected by the consumer (e.g. col 2 In 25 – col 3 In 30).

11. Regarding claim 5 –

Dolphin discloses the method comprising permitting selection by the consumer from among only the compatible respective subsets of at least one of the types of software, the types of compression formats, and the types of portable devices, when the given type of digital rights management algorithm is selected by the consumer (e.g. col 2 In 25 – col 3 In 30).

12. Regarding claim 6 –

Dolphin discloses the method of claim 2, further comprising permitting selection by the consumer from among only the compatible respective subsets of at least one of the types of software, the types of compression formats, and the types of digital rights management algorithms, when the given type of portable device is selected by the consumer (e.g. col 2 ln 25 – col 3 ln 30).

13. Regarding claim 7 –

Schneck discloses the method of claim 1, wherein the downloadable digital data includes at least one of audio data, video data, and text data (e.g. col 8 ln 1-30).

14. Regarding claim 8 –

Dolphin discloses the method wherein each type of software, each type of compression format, each type of digital rights management algorithm, and each type of portable device is displayed on the page and selectable by way of activation by the consumer (e.g. col 2 ln 25 – col 3 ln 30).

15. Regarding claim 9 –

Dolphin discloses the method of claim 8, further comprising receiving the consumer's selection of at least one of the type of software, the type of compression format, the type of digital rights management algorithm, and the type of portable device, over the electronic network at the presence (e.g. col 3 ln 1-30).

16. Regarding claim 10 –

Dolphin discloses discloses the method comprising transmitting the downloadable digital data to the consumer over the electronic network in a format consistent with at least one of the selected type of software, the selected type of compression format, the

selected type of digital rights management algorithm, and the selected type of portable device (e.g. col 2 ln 25 – col 3 ln 30).

17. Regarding claim 11 –

Schneck discloses the method comprising storing at least one of the selected type of software, the selected type of compression format, the selected type of digital rights management algorithm, and the selected type of portable device (e.g. col 8 ln 1-30).

18. Regarding claim 12 –

Schneck discloses the method comprising designating the stored type of software, type of compression format, type of digital rights management algorithm, and type of portable device as default format options and transmitting the default format options from the presence to the consumer over the electronic network via the page in response to another command from the consumer over the electronic network indicating that the consumer wishes another transaction for downloadable digital data (e.g. col 8 ln 1-30).

19. Regarding claim 13 –

Schneck discloses the method wherein the portable devices on which the downloadable digital data may be stored are compliant with secure digital music initiative (SDMI) specifications (e.g. col 8 ln 60 – col 9 ln 60).

20. Regarding claim 14 –

Schneck discloses the method of claim 1, wherein the electronic network is the Internet and the presence is a web site thereon (e.g. col 8 ln 1-30).

21. It would be obvious to one of ordinary skill in the art to combine the teachings of Schneck and Dolphin in order to obtain a more user as well as secure method for the distribution of digital data.

22. Claims 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneck et al (US 6,314,409A) in view of Dolphin (US 5,457,746A).

23. Regarding claim 15 –

Schneck discloses a system for facilitating a transaction for downloadable digital data over an electronic network, comprising: means for maintaining a presence on the electronic network to which a consumer may connect; means for transmitting a page from the presence to the consumer over the electronic network, the page including information concerning the downloadable digital data; means for receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the downloadable digital data; and means for transmitting format options from the presence to the consumer over the electronic network via the page (e.g. col 6 In 60 – col 7 In 20).

24. Schneck does not disclose, but Dolphin does, the format options being selectable by the consumer and including at least one of (i) types of software on which the downloadable digital data may be executed; (ii) types of portable devices on which the downloadable digital data may be stored; (iii) types of compression formats in which the downloadable digital data may be configured; (iv) types of CODECs through which the downloadable digital data may be processed; and (v) types of digital rights management algorithms to which the downloadable digital data may be subject (e.g. col 2 In 25 – col 3 In 30).

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25. Regarding claim 16 –

Schneck discloses the system wherein at least one of (i) a given type of software is compatible with respective subsets of at least one of the types of compression formats, the types of digital rights management algorithms, and the types of portable devices; (ii) a given type of compression format is compatible with respective subsets of at least one of the types of software, the types of digital rights management algorithms, and the types of portable devices; (iii) a given type of digital rights management algorithm is compatible with respective subsets of at least one of the types of software, the types of compression formats, and the types of portable devices; and (iv) a given type of portable device is compatible with respective subsets of at least one of the types of software, the types of compression formats, and the types of digital rights management algorithms (e.g. col 7 ln 50 – col 8 ln 50).

26. Regarding claim 17 –

Schneck discloses the system wherein the downloadable digital data includes at least one of audio data, video data, and text data (e.g. col 8 ln 1-30).

27. Regarding claim 18 –

Dolphin discloses the system of claim 15, wherein each type of software, each type of compression format, each type of digital rights management algorithm, and each type of portable device is displayed on the page and selectable by way of activation by the consumer (e.g. col 2 ln 25 – col 3 ln 30).

28. Regarding claim 19 –

Dolphin discloses the system comprising means for transmitting the downloadable digital data to the consumer over the electronic network in a format consistent with at least one of the selected type of software, the selected type of compression format, the selected type of digital rights management algorithm, and the selected type of portable device (e.g. col 2 ln 25 – col 3 ln 30).

29. Regarding claim 20 –

Schneck discloses the system wherein the portable devices on which the downloadable digital data may be stored are compliant with secure digital music initiative (SDMI) specifications (e.g. col 8 ln 60 – col 9 ln 60).

30. Regarding claim 21 –

Schneck discloses the system wherein the electronic network is the Internet and the presence is a web site thereon (e.g. col 8 ln 1-30).

31. It would be obvious to one of ordinary skill in the art to combine the teachings of Schneck and Dolphin in order to obtain a more user as well as secure method for the distribution of digital data.

32. Claims 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneck et al (US 6,314,409A) in view of Dolphin (US 5,457,746A).

33. Regarding claim 22 –

Schneck discloses an electronic storage medium for storing instructions which, when executed by a programmable controller, carry out a method for facilitating a transaction for downloadable digital data over an electronic network, comprising: maintaining a presence on the electronic network to which a consumer may connect; transmitting a page from the presence to the consumer over the electronic network, the page including

information concerning the downloadable digital data; receiving a command from the consumer over the electronic network indicating that the consumer wishes the transaction for the downloadable digital data; and transmitting format options from the presence to the consumer over the electronic network via the page (e.g. col 6 ln 60 – col 7 ln 20).

34. Schneck does not disclose, but Dolphin does, the format options being selectable by the consumer and including at least one of (i) types of software on which the downloadable digital data may be executed; (ii) types of portable devices on which the downloadable digital data may be stored; (iii) types of compression formats in which the downloadable digital data may be configured; (iv) types of CODECs through which the downloadable digital data may be processed; and (v) types of digital rights management algorithms to which the downloadable digital data may be subject (e.g. col 2 ln 25 – col 3 ln 30).

35. Schneck discloses the electronic storage medium of claim 22, wherein at least one of (i) a given type of software is compatible with respective subsets of at least one of the types of compression formats, the types of digital rights management algorithms, and the types of portable devices; (ii) a given type of compression format is compatible with respective subsets of at least one of the types of software, the types of digital rights management algorithms, and the types of portable devices; (iii) a given type of digital rights management algorithm is compatible with respective subsets of at least one of the types of software, the types of compression formats, and the types of portable devices; and (iv) a given type of portable device is compatible with respective subsets of

at least one of the types of software, the types of compression formats, and the types of digital rights management algorithms (e.g. col 7 ln 50 – col 8 ln 50).

36. Regarding claim 24 –

Schneck discloses the electronic storage medium of claim 22, wherein the downloadable digital data includes at least one of audio data, video data, and text data (e.g. col 8 ln 1-30).

37. Regarding claim 25 –

Dolphin discloses the electronic storage medium wherein each type of software, each type of compression format, each type of digital rights management algorithm, and each type of portable device is displayed on the page and selectable by way of activation by the consumer (e.g. col 2 ln 25 – col 3 ln 30).

38. Regarding claim 26 –

Dolphin discloses the electronic storage medium comprising means for transmitting the downloadable digital data to the consumer over the electronic network in a format consistent with at least one of the selected type of software, the selected type of compression format, the selected type of digital rights management algorithm, and the selected type of portable device (e.g. col 2 ln 25 – col 3 ln 30).

39. Regarding claim 27 –

Schneck discloses the electronic storage medium of claim 22, wherein the portable devices on which the downloadable digital data may be stored are compliant with secure digital music initiative (SDMI) specifications (e.g. col 8 ln 60 – col 9 ln 60).

40. Regarding claim 28 –

Schneck discloses the electronic storage medium of claim 22, wherein the electronic network is the Internet and the presence is a web site thereon (e.g. col 8 ln 1-30).

41. It would be obvious to one of ordinary skill in the art to combine the teachings of Schneck and Dolphin in order to obtain a more user as well as secure method for the distribution of digital data.

42. Examiner's note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may be applied as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Conclusion

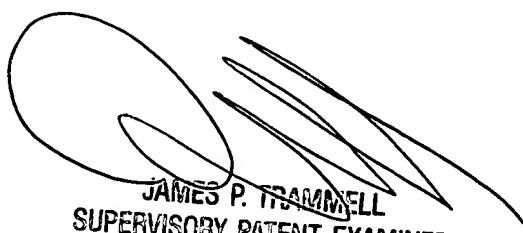
43. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

44. Downs et al (US 6,226,618) discloses an electronic content delivery system.

45. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 703-305-0625. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

46. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

47. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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